EXHIBIT Q

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re: NORTHWESTERN CORPORATION,) Chapter 11) Bankruptcy Case No. 03-12872 (JLP)
Reorganized Debtor. NORTHWESTERN CORPORATION,)))
Plaintiff,) Adversary Proceeding Case No. 04-55051 (JLP)
MAGTEN ASSET MANAGEMENT CORPORATION and TALTON R. EMBRY	Proposed Hearing Date: January 7, 2005 at 11:30 a.m.
Defendants.)

MOTION BY THE COMMITTEE FOR PROTECTIVE ORDER PURSUANT TO RULE 7026(c) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND RULE 26(c) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Weiss"), as counsel to the Official Committee of Unsecured Creditors appointed in the above-captioned Chapter 11 case for NorthWestern Corp. ("NorthWestern," the "Debtor" or "Plaintiff"), Houlihan, Lokey, Howard & Zulkin, as financial advisor to that committee ("Houlihan"), and former members of that committee, Franklin Mutual Advisers LLC ("Franklin"), Comanche Park, LP ("Comanche"), HSBC Bank USA ("HSBC"), AG Capital Recovery Partners III, L.P. ("AG"), Avenue Capital Management ("Avenue"), OCM Opportunities Fund ("OCM"), and Wilmington Trust Corporation ("WTC"), (collectively, the "Committee") and hereby files this Motion for Protective Order (the "Motion"), pursuant to Rule 7026(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and

Rule 26(c) of the Federal Rules of Civil Procedure (the "Federal Rules"), with respect to the nine subpoenas (the "Subpoenas") in the Adversary Proceeding (as defined herein) that were addressed to the Committee by Magten Asset Management Corporation ("Magten") and Talton R. Embry ("Mr. Embry," together with Magten, the "Defendants") on either December 13 or 15, 2004, ¹ and respectfully shows the Court as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this Chapter 11 case and the Motion is properly before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

- 2. On September 14, 2003 (the "<u>Petition Date</u>"), NorthWestern, a publicly traded utility company incorporated in Delaware, filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the "<u>Chapter 11 Case</u>"). The Office of the United States Trustee appointed the Official Committee of Unsecured Creditors in the Debtor's bankruptcy proceeding on September 30, 2003.
- 3. Paul, Weiss served as legal counsel to the Committee. Houlihan served as financial advisor to the Committee. The other Committee Members (Franklin Templeton, Comanche, HSBC, AG, Avenue, OCM, and WTC) served on the Committee during the Chapter 11 Case.
- 4. On October 8, 2004, the Court entered an Oral Ruling Confirming the Debtor's Second Amended and Restated Plan of Reorganization Under Chapter 11 of the

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The Subpoenas are attached as Exhibit A-I.

Bankruptcy Code, and on October 19, 2004, the Court entered its Final Order Confirming the Debtor's Second Amended and Restated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Confirmation Order"). The effective date (the "Effective Date") of the Debtor's Second Amended and Restated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code was November 1, 2004.

- Mr. Embry was at all relevant times the 100% owner and Chairman of 5. Magten, and Magten is a corporation organized under the laws of Delaware, having its principal place of business located at 410 Park Avenue, 14th Floor, New York, New York 10022.
- 6. Magten filed a Proof of Claim, designated claim number 842 by the Debtor's claims agent (the "Magten Claim"). The Magten Claim asserts unliquidated claims against the Debtor's estate for damages resulting from the alleged fraudulent transfer of the utility assets of Northwestern Energy, LLC to Northwestern on November 15, 2002 (the "Transfer") and the face amount of the certain of the Debtor's Series A 8.45% Quarterly Income Preferred Securities (the "OUIPS") that were held by Magten as of the Petition Date.
- 7. On or about November 6, 2003, this Court entered its Order Permitting Securities Trading Upon Establishment of Ethical Wall (the "Securities Trading Order"). The Securities Trading Order prohibits members of the Committee from trading in the securities of the Debtor and its affiliates, except in circumstances where Committee members establish and implements an ethical wall (the "Ethical Wall") in accordance with the terms and conditions of the Securities Trading Order
- 8. Upon request of the Defendants, and by notice dated November 25, 2003, the Office of the United States Trustee for the District of Delaware (the

"Trustee") appointed Magten to the Committee. Magten was represented on the Committee by its 100% principal, Embry, and by its legal counsel Fried, Frank, Shriver & Jacobson LLP ("Fried Frank").

- On April 16, 2004, Magten and Law Debenture Trust Company of 9. New York ("Law Debenture") filed an adversary proceeding to avoid the transfer of assets of Clark Fork and Blackfoot LLC (f/k/a Northwestern Energy, LLC) ("Clark Fork") to the Debtor in November 2002, pursuant to what is generally referred to as the "going flat" transaction (the "Magten Adversary Proceeding").
- 10. The Magten Adversary Proceeding resulted in an inherent conflict between the Defendants and the Committee. Accordingly, in a letter dated May 6, 2004, the Trustee removed Magten from the Committee, stating that the relief sought in the Magten Adversary Proceeding "is inconsistent with Magten's . . . fiduciary duty to the Committee's constituents, the general unsecured creditors of North Western Corporation."
- Thereafter, on or about August 20, 2004, the Debtor filed this 11. adversary proceeding (the "Adversary Proceeding") seeking subordination of Magten's claims, actual damages, equitable relief and objecting to the Magten Claim, based on the allegation that Magten possessed material, non-public information, and traded certain QUIPs while in possession of this knowledge in violation of both its fiduciary duties and the Trading Order.
- On December 10, 2004, the Defendants served their First Request for 12. Production of Documents to Northwestern Corporation, and on December 14, they served their Notice of Deposition and Interrogatories. NorthWestern has moved for a protective

571186vI 4 order regarding the discovery requests (Adv. Dkt. No. 60) that will be the subject of an expedited hearing by this Court on January 7, 2005. (See Adv. Dkt. No. 74.)

- Not content with seeking discovery from Plaintiff, on 13. December 14, 2004, the Defendants served a Subpoena in the Adversary Proceeding on the Debtor's attorney, Paul, Hastings, Janofsky & Walker LLP ("Paul Hastings"). Paul Hastings filed a Motion to Quash Subpoena And For Protective Order in this Court on December 30, 2004 (Adv. Dkt. No. 64), withdrew that motion on January 3 (Adv. Dkt. No. 66), and refiled it in the Bankruptcy Court of Southern District of New York on January 4, 2004.
- 14. In addition to Plaintiff, Magten proceeded to serve ten other parties with discovery requests, seeking substantially similar information from all Committee Members. The ten parties include the Committee members, as well as the Debtor's financial advisor, Lazard Freres.
- 15. Pursuant to Bankruptcy Rule 7026(c) and Federal Rule 26(c), the Court may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense.
- 16. The nine Committee Members now seek a protective order limiting these depositions. They seek a protective order from this Court rather than moving to quash in each of the four courts from which these subpoenas issued. Plaintiff has conceded that this is the proper Court to hear such an issue.
- 17. Specifically, on January 5, 2004, Defendants filed a Supplemental Objection (Adv. Dkt. No. 72) arguing that the Debtor's withdrawal and refiling of its Motion to Quash in the District Court for the Southern District of New York, from whence

the subpoena was issued, was improper. Instead, Defendants argued this Court is the proper forum for seeking such a protective order. Defendants stated that bringing the protective order motion before this Court, and obtaining such an order therefrom, "could have had the same practical effect [as quashing the subpoena] with the added benefit of appearing before a Court that was already familiar with the issues and the parties." (Def. Supp. Obj. at 2 (Adv Dkt. No 73).) This is correct as a matter of Delaware law. See Mannington Mills v. Armstrong World Inds., Inc., 206 F.R.D. 525, 529 (D. Del. 2002) (equating Fed. R. Civ. P. 26(c) and Fed. R. Civ. P 45(c) and stating that "a non-party moving to quash a subpoena, in essence, is the same as moving for a protective order that discovery not be allowed.")

Defendants Seek Irrelevant Information

- As the Committee understands it, the primary issue in the Adversary 18. Proceeding is whether Defendants traded on the basis of information that they had obtained when on the Committee.
- The Third Party Requests, however, seek 30(b)(6) depositions from 19. each Committee Member on far-reaching subjects that go way beyond this limited topic or the likely knowledge that any Committee Member would have. The deposition topics cover "the [entire] Chapter 11 case of NorthWestern corporation, including but not limited to those issues related to or involving the Committee or either defendant"; the damages suffered "by any creditor of the NorthWestern as a result of the acts or omissions alleged in the complaint," the "compliance of any person to the Trading Order and Confidentiality order," and knowledge by the subpoenaed party of all the subpoenaed party's purchases and sales of securities of or claims against NorthWestern Corporation. These requests are inappropriate as they purport to require the Committee Members to testify on matters that are not relevant to

whether Defendants possessed (and traded on) material non-public information. Moreover, the proposed depositions are burdensome, duplicative, and redundant.

> 20. Accordingly, the Committee seek the protection of this Court.

The Subpoenas Are Burdensome

- 21. Defendants seek to depose ten non-parties, nine of whom are represented here, including seven members of the Committee, their legal advisor and their financial advisor. The depositions are scheduled to take place all over the United States; the Committee members have been subpoenaed in four different jurisdictions.
- 22. It would be expensive and burdensome for the Committee to prepare for and submit to even a single deposition on the wide range of topics covered by the 30(b)(6) request. Nine such depositions would be intolerable. In addition, it is patently unfair to place such a burden on the Committee and its former members now that the Plan has been confirmed and has become effective. Indeed, permitting such wide ranging discovery against former Committee Members about internal committee discussions as well as confidential and proprietary business information is wholly at odds with the policy encouraging vigorous committee debate and would send a chilling message to persons considering future membership on such committees.
- 23. On its face, Defendants' deposition requests are unlawful. Under Federal Rule 30(a)(2) and Bankruptcy Rule 7030(a)(2), a party must obtain the leave of the Court if it seeks to take more then 10 depositions; Magten seeks a total of 13 depositions — 11 non-party depositions and 2 depositions of the Plaintiffs. (See Motion for Expedited Teleconference at 2 (Adv. Dkt. No. 70.) No such leave has been sought, much less granted.

The Discovery Requests Are Duplicative And Seek Cumulative Discovery

- 24. The nine subpoenas are virtually identical, differing only in the parties to which they are addressed.
- 25. If Defendants do legitimately need discovery from the Committee on the information provided to Defendants by the Committee, there is no reason why Defendants could not obtain this information with a single deposition of an appropriate Committee representative.
- 26. The fact that Defendants have not requested particularized information from any Committee Member about a specific meeting, discussion, report, or conversation shows that the requests were not designed to reduce the burden on the subpoenaed parties. It also demonstrates that Defendants do not have a specific need for the deposition of any Committee Member, let alone of every single Committee Member.
- 27. Defendants have stated that they need discovery primarily to obtain "the alleged 'material, non-public information" upon which Defendants are alleged to have traded." (Def. Supp. Obj. at 3; (Adv. Dkt. No. 73.) Clearly, however, this is a question that should be resolved between the Plaintiff and the Defendants, not through a third party.
- 28. Furthermore, Defendants themselves have much of the information they are seeking. Defendants should know what information and documents they were provided while on the Committee and what communications they had with the Committee Members. This renders the requests for such information from the Committee duplicative.

Relief Requested And Basis For Relief

The Requests For Depositions of Non-Party Should Be Quashed As Burdensome And Cumulative

- 29. The Committee respectfully request the Court to enter an order preventing Defendants from deposing Committee, pursuant to Bankruptcy Rule 7026(b)(2), because the information sought by the Defendants is entirely burdensome, cumulative and more readily obtainable from the parties to the Adversary Proceeding.
- By filing such burdensome requests, Defendants have violated their 30. obligations under Federal Rule 45(c)(1) and Bankruptcy Rule 9016(c)(1) to "take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena."
- Further, pursuant to Federal Rule 26(b) and Bankruptcy Rule 31. 7026(b)(2), discovery methods otherwise permitted "shall be limited by a court if it determines that: (1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive." See Bayer AG v. Betachem, Inc., 173 F.3d 188, 191 (3d Cir. 1999); Gargiulo v, MGI Communications, LP, Civ.A. No. 91-3885, 1992 WL 22242, at *2 (E.D. Pa. 1992).
- Accordingly, the Committee request that the Court enter a protective 32. order prohibiting Defendants from taking any depositions of any Committee Member, or in the alternative, limiting Defendants to deposing a single Committee representative.

The Subpoena to Paul, Weiss Should be Quashed In Its Entirety for Additional Reasons

Paul, Weiss also seeks a protective order preventing the duplicative 33. production of documents that are responsive to the NOR Production Request. As retained legal counsel to the Committee, Paul, Weiss does not have any non-privileged, responsive, documents in its custody or control other than documents it holds in its role as Committee

advisor, which are subject to the Production Requests. As such, Paul, Weiss should not be compelled to produce such duplicative and cumulative documents pursuant to Bankruptcy Rule 7026(b)(2). See Bayer, 173 F.3d at 191.

- Paul, Weiss is not a participant witness and should not be required to 34. submit to a deposition that will result in nothing more than the assertion of the attorney-client privilege. See In re Subpoenas Duces Tecum Dated March 16, 1992, 978 F.2d 1159, 1161 (9th Cir. 1992) (recognizing attorney-client privilege between a creditor's committee and its counsel.) .
- 35. Through the Subpoena to Paul, Weiss, the Defendants seek discovery of information that Defendants have and that is duplicative of the Request to both Plaintiff, other non-parties, and the Committee Members. As such, the Defendants have alternate means to obtain such information other than deposing Paul, Weiss.
- 36. Accordingly, Paul, Weiss seeks a protective order from this Court quashing the Paul, Weiss Subpoena in its entirety for the additional reason that Paul, Weiss does not possess any non-privileged responsive materials other than those documents that it holds in its role as legal advisor and as such the Paul, Weiss subpoena is designed for the sole purpose of harassing the Committee's retained counsel.

Notice

Notice of this Motion has been provided to: (i) the Office of the United 37. States Trustee, (ii) counsel for the plaintiff, and (iii) counsel for the defendants. In light of the nature of the relief requested herein, the Non-Moving Parties submits that no other or further notice of the Motion is required.

No Prior Request

38. No prior request for the relief sought herein has been made to this or to any other Court.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court (i) enter a protective restricting Defendants from taking any depositions of the Committee Members, and quashing the Paul Weis Subpoena in its entirety.

Dated: January 6, 2005 New York, New York

THE BAYARD FIRM

Neil Glassman (#2087 Charlene D. Daxis (#23/36)

Eric M. Sutty (#4007)

222 Delaware Avenue, Suite 900

P.O. Box 25130

Wilmington, Delaware 19899

(302) 650-5000

- and -

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP Alan W. Kornberg Mark H. Alcott James G. Wheaton 1285 Avenue of the Americas New York, New York 10019 (212) 373-3000

Attorneys for Paul, Weiss, Rifkind, Wharton & Garrison LLP, Houlihan, Lokey, Howard & Zulkin, Franklin Templeton Mutual Services Fund, Comanche Park LP, HSBC Bank U.S.A., AG Capital Recovery Partners III, L.P., Avenue Capital Management, OCM Opportunities Fund, and Wilmington Trust Corporation

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
NORTHWESTERN CORPORATION,)
Reorganized Debtor.) Bankruptcy Case No. 03-12872 (JLP))
NORTHWESTERN CORPORATION,))
Plaintiff,	Adversary Proceeding Case No. 04-55051 (JLP)
ν.	
MAGTEN ASSET MANAGEMENT CORPORATION and TALTON R. EMBRY)))
Defendants.)

ORDER GRANTING MOTION BY THE COMMITTEE FOR PROTECTIVE ORDER PURSUANT TO RULE 7026(c) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND RULE 26(c) OF THE FEDERAL RULES OF CIVIL PROCEDURE

UPON, the Motion of Paul, Weiss, Rifkind, Wharton & Garrison LLP, as retained counsel to the Official Committee of Unsecured Creditors, Houlihan, Lokey, Howard & Zulkin, as financial advisor to that committee, and former members of that committee Franklin Mutual Advisers, LLC, Comanche Park, LLC, HSBC Bank USA, AG Capital Recovery Partners III, L.P., Avenue Capital Management, OCM Opportunities Fund, and Wilmington Trust Corporation, (collectively, the "Committee") For Protective Order Pursuant to Rule 7026(c) of the Federal Rules of Bankruptcy Procedure and Rule 26(c) of the Federal Rules of Civil Procedure with Respect to the Discovery Requests of Magten Asset Management Corporation ("Magten") and Talton R. Embry ("Embry," together with Magten, the "Defendants") that have been served on the Committee, and it

Case 1:05-cv-00548-JJF Document 27-2 Filed 02/16/2007 Page 14 of 49

appearing that the Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334

and that it is a core matter pursuant to 28 U.S.C. § 157(b)(2); and the Court having

determined that the relief requested in the Motion is in the best interest of the Committee,

and it appearing that due notice of Motion has been provided and that no other or further

notice need be given; and sufficient cause appearing therefore; it is hereby;

ORDERED, that the Motion is granted; and it is further

ORDERED, that the Committee shall not have to respond to Defendants'

Requests for Depositions; and it is further

ORDERED, that this Court shall retain jurisdiction to hear and determine

all matters arising from the implementation of this Order.

Dated: January ____, 2005

Wilmington, Delaware

Honorable John L. Peterson United States Bankruptcy Judge

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Exhibit A

FROM

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Colaic Upinio	RICT OF NEW YORK 212 373 - 2083
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in re	SUBPOENA IN AN ADVERSARY PROCEEDING
Northwestern Corporation,	Case No. 03-12872 (JLP)
Reorganized Deblor	Chapter 11
	Pendind In the U.S. Bankruptcy Court
	for the District of Delaware
Northwestern Corporation, Plaintiff	
A" Ladon	Adv. Proc. No. 04-65051
Magten Asset Management Corporation	Pending in the U.S. Bankruptcy Court
and Tatton R. Embry. Defendants	for the District of Dolawere
To: AG Capital Recovery Partners III, L.P. by pe	rson designated pursuant to Schedule A
clo Angelo Gorden & Co	
246 Park Avenue New York, NY 10022	
[7] YOU ARE COMMANDED to appear in the United	States Bankruptcy Court at the place, date, and time
specified below to testify in the above adversary pro-	ceeding.
PLACE	COURTROCM
, =	DATE AND TIME
deposition in the above adversary proceeding.	B, date, and time specified below to testify at the taking of B DATE AND TIME
PLACE Fried, Frank, Harris, Shriver & Jacobson i One New York Plaza New York, NY 10004	Jenuary 21, 2005 at 10:00 a.m.
	The second and according of the following documents or
X YOU ARE COMMANDED to produce and perm	it inspection and copying of the following documents or (list documents or objects): See attached Schedule B
	The state of the s
PLACE Fried, Frank, Harris, Shriver & Jacobson	LLP
One New York Plaza	January 4, 2005 at 10:00 a.m.
New York, NY 10004	
☐ YOU ARE COMMANDED to permit inspection of	If the following premises at the dato and lime specified below.
	DATE AND TIME
PLACE	
Any subpoensed organization not a party to this addirectors, or managing agents, or other persons who person designated, the matters on which the person adversary proceedings by Rule 7030, Fed.R.Bunkr	iversary proceeding shall designate one or more officers, to consent to testify on its behalf, and may set forth, for each in will testify, Fed.R.Civ.P. 30(b)(6) made applicable in .P.
ISSUING OFFICER SIGNATURE AND TITLE	DATE 1.01-11
Attorney for Defendants	med 12/13/04
ISSUING OFFICERS NAME, ANDRESS AND PHONE NUMBER	7
Bonnie Steingart, Esq. (
Fried, Frank, Harris, Shriver & Jacobson LLP One New York Plaza	
New York, NY 10004	
(212) 859-8000	

FROM

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	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)	And the State of t	Title
Marie Commission of the Commis	DECL	ARATION OF SERVER
1 declare und foregoing informatio	der penalty and perjury u on contained in the Proof	nder the laws of the United States of America that the of Service is true and correct.
Executed on	DATE	Signature of Server

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPCENAS.

(1) A party or an oliversty responsible for the insurance and service of a subpooner shall take reasonable steps to avoid improving tending buttern or expense on a portion tubject to instruction. The crust on tehalf of which the subposes and its enterties had only and impose upon the party or attention of this 44th and appropriate standard, which may include a built not limited to both amongs and a reasonable adomined a facility of the subposes.

A appropriate standard, which may include, but is not kinked to lock entrings and a reasonable addressed from a process of interests of permitted in particular and copying of designated books, report, documents or tanging of interests of permitted in particular or interests of permitted in particular or interests of production of interests of permitted in particular or interests of interes

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- (i) nowher a parson who is not a party or an officer of a party to have to a place more that 100 roles from the place where that parson resident is triplayed or requiring transparts business in parson, except that, subject to the provisions of clause ((A)(3)(B)(A) of this rule state a portion may in order to award the becommended to leave from any such place within the state is which the rule is table, or
 - (ii) includes disclosing of onlygated or other promoted matter and no suraption or waiver applies, or
 - (iv) sphjede a prazan ia uncue buider.
- (B) If a subpoent
- (i) Ladmanz aproprime of a parcel section to opport complemental understrip questionalists on communical justicities or (4) Inquires disclosure of an unveloped expents opinion or in-formation and downlight specific events or occurrence in dispute and reciding from the expent a study moce not at the request of any porty, or
- regionably compensated, the count may cross appealances or production only upon expected conditions.
- (4) DUTIES IN RESPONDING TO SUSPOENA.
- (1) A person responding to a subprema to produce documents shall produce from set they are kept in the usual course of buriness or shall urganize and label them to consespond with the categories in the demand.
- (2) When information subject to a subposes is withinked on a claim shall be privileged to public to protection as the presence of materials, the dain shall be expected by a description of the neither of the documents communications, or things not produced that is sufficient to enable the description of the neither of the documents communications, or things not produced that is sufficient to enable the description of the neither of the documents communications, or things not produced that is sufficient to enable the description of the documents communications, or things not produced that is sufficient to enable the description of the documents o contact the daim

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FROM

Schedule A

On January 21, 2005 at 10:00 a.m. E.S.T. at the office of Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, New York the attorneys for Magten Asset Management Corporation and Talton R. Embry will take the deposition of a representative or representatives of AG Capital Recovery Partners III, L.P., pursuant to Fed. R. Civ. P. 30(b)(6) made applicable by Fed. R. Bankr. P. 7030, upon oral examination before a Notary Public, or some other official authorized by law to take depositions. The deposition shall be recorded by stemographic means and/or by videotape. The oral examination will continue from day to day until completed.

This deposition is being taken for pre-trial discovery, for use at trial, and for such other purposes as permitted by law. You are invited to attend and take such part as fit and proper. The deponent is hereby advised of its duty to designate and produce one or more persons to testify on its behalf as to the matters of examination listed below for the time period Octobe: 1, 2003 to the present:

- 1. The chapter 11 case of NorthWestern Corporation, including, but not limited to those issues related to or involving the Committee or either Defendant.
- Any confidential or non-public documents concerning NorthWestern Corporation provided to either Defendant.
- 3. Any communications concerning confidential or non-public docurrents, information, or communications provided to or discussed with either Defendant concerning NorthWestern Corporation.
- 4. Any and all documents, communications or documents relating to communications concerning, involving, or relating to Defendants, Defendants' purchases and sales of QUIPS, or Defendants' involvement with the Committee.
- 5. Any ectual or potential damages or injury suffered by you or any creditor of NorthWestern Corporation as a result of the acts or omissions alleged in the Corpolaint.

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- 6. The meetings or teleconferences of the Committee, including, but not ilmited to meetings or teleconferences between the Committee and third parties or between the Committee and NorthWestern Corporation, and any materials distributed at or in preparation for such meetings or teleconferences, and any documents related to or communications concerning such meetings or teleconferences.
- Your compliance with the Trading Order and the compliance or lack thereof of any person subject to the Trading Order.
- 8. Your compliance with the Confidentiality Agreement and the compliance or lack thereof of any person subject to the Confidentiality Agreement.
- Your knowledge of communications in this case between you and any other
 Person, including but not limited to NorthWestern Corporation or the Committee, concerning involving or relating to either Defendant.
- 10. Your purchases and sales of securities of or claims against NorthV/estern Corporation.
- 11. The efforts undertaken to respond to the request for documents set out in Schedule B to this Subpoens and the contents of those responsive documents.

Schedulo B

- 1. All documents relating to or referring to communications between you and either Defendant.
- 2. All non-public, confidential documents concerning NorthWesterr. Corporation provided to either Defendant by you.
- 3. All documents relating to or referring to communications between you and any other party relating to either Defendant.
- 4. All documents and communications relating to the purchase or sale of the QUIPS by either Defendant.
- All documents relating to and communications referring to the purchase or sale of securities of NorthWestern Corporation by you.

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- 6. All documents relating to and communications referring to the compliance or lack thereof with the Trading Order by you or any other party.
- All documents relating to or communications concerning the purchase or sale of any securities of NorthWestern Corporation (including, without limitation, QUIPS) by Defendants or any other creditor that NorthWestern Corporation contends resulted in injury to any creditor of NorthWestern Corporation between October 1, 2003 and the present.
- 8. All documents relating to or communications concerning any damages or injury suffered by you or any creditor of NorthWestern Corporation, which damages and injuries NorthWestern Corporation purports to alloge in the Adversary Proceeding.
- 9. All documents relating to or communications concerning the identity of any creditor of NorthWestern Corporation that has suffered damages or injuries, which damages and injuries NorthWestern Corporation purports to allege in the Adversary Proceeding.
- 10. All documents relating to and communications regarding the Confidentiality

 Agreement.
 - 11. All documents relating to and communications regarding the Trailing Order.
- 12. All documents relating to and communications regarding the Magten Proposed Trading Order.

DEFINITIONS

The terms used herein shall have the meanings ascribed to them in the definitions set forth below:

- 1. "Adversary Proceeding" shall mean NorthWestern Corporation v. Magten Asset Management Corporation and Talton R. Embry, Case No. 04-55051 (JLP), United States Bankruptcy Court for the District of Delaware.
- "Affiliates" means any person or emity controlled or managed by, controlling or under common control with any other person or entity.
 - 3. "All" means "any and all," and "any" means "any and all."

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- 13. "Magten" shall mean Magten Asset Management Corporation and any person or entity acting or purporting to act on behalf of, at the direction of, or in concert with it, including but not limited to present and former officers, directors, employees, agents, representatives and attorneys.
- 14. "Magten Proposed Trading Motion" shall mean that certain draft proposed motion to clarify the Trading Order, together with any other draft documents in support thereof, including but not limited to a draft form of order, circulated on or about February 5, 2004.
- 15. "NorthWestern Corporation" shall mean NorthWestern Corporation, its Affiliates and any parent, subsidiary, predecessor and successor, and any person or entity asting or purporting to act on behalf of, at the direction of, or in concert with it, including but not limited to NorthWestern Corporation's present and former officers, directors, employees, servants, agents, representatives, financial advisors and attorneys.
- 'Person' includes any natural person, group, investigatory body, governmental unit, governmental agency or department, corporation, association, partnership, limited partnership, joint venture, sole proprietorship, business, business entity, organization, or institution,
- 17. "QUIPS" shall mean the Series A 8.45% Quarterly Income Preferred Securities issued by Montana Capital I, a business trust established pursuant to the Delaware Business
 Trust Act
- 18. "Trading Order" shall mean that certain order dated November 6, 2003 by the United States Bankrupley Court for the District of Delaware Permitting Securities Trading Upon an Establishment of an Ethical Wall, and all documents filed in support thereof.
- 19 "You" or "your" shall mean AG Capital Recovery Partners III, L.P., its Affiliates, and any person or entity acting or purporting to act on behalf of, at the direction of, or in concert with it, including but not limited to present and former officers, directors, emproyees, servants, agents, representatives and attorneys.

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INSTRUCTIONS

- I. "And" as well as "or" shall be construed either disjunctively or con unctively as necessary to bring within the scope of this request all responses that might otherwise be construed to be outside of its scope.
- 2. References to the singular shall include the plural, and references to the plural shall include the singular.
- 3. The documents covered by this request include all documents in the possession, custody or control of you, or any documents that were generated or received by you or otherwise came into existence or were utilized by you from October 1, 2003 through the date of production.
- 4. A request for a document shall be desired to include a request for any transmittal sheets, cover letters, exhibits, enclosures, or attachments to the document, and any file folder in which the document was maintained, in addition to the document itself.
- A request for a document shall be deemed to include a request for all drafts and successive iterations thereof and all modifications thereto, in addition to the document itself.
- 6. With respect to each document withheld from production on the ground of privilege or any similar claim, identify its author(s), recipient(s), addresses(s), date, subject matter, number of pages, attachments or appendices, present custodian, and identify the nature of, and grounds for, each claim of privilege.
- 7. If any of the documents requested herein were, but no longer are, in the possession, custody, or control of you, state what disposition was made of such documents, why, and include the date and place of disposition and the person(s) who disposed of the document(s).
- 8. The documents shall be produced in the order and form in which they have been maintained and the response hereto shall identify the individual from whose file(s), and indicate in response to which request, the document has been produced.

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DEC 14 2004 10:15 PAGE 08 ** TOTAL PAGE 08 **

Case 1:05-cv-00548-JJF Document 27-2 Filed 02/16/2007 Page 23 of 49

Exhibit B

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p.2

United States Bankruptcy Court SOUTHERN DISTRICT OF NEW YORK

In re Northwestern Corporation, Reorganized Dobtor	SUBPOENA IN AN ADVERSARY PROCEEDING Case No. 03-12872 (JLP) Chapter 11 Pending in the U.S. Bankruptcy Court for the District of Delaware	
Nonhwestern Corporation, Plaintlif Y. Megten Asset Management Corporation and Talton R. Embry, Defondants	Adv. Proc. No. 04-55051 Pending in the U.S. Bankruptcy Gourt for the District of Delaware	
To: Avenue Capital Managrament by person des 535 Madison Avenue New York, NY 10022 Tyou ARF COMMANDED to appear in the Unite specified below to testify in the above adversary pro-	ed States Bankruptcy Court at the place, date, and time	
PLACE	COURTROOM	
	DATE AND TIME	
deposition in the above adversary proceeding. PLACE Fried, Frank, Harris, Shriver & Jacobson One New York Plaze New York, NY 10004	LLP DATE AND TIME January 21, 2005 at 1:00 p.m.	
	nit inspection and copying of the following documents or (list documents or objects): See attached Schedule B	
PLACE Fried, Frank, Harrls. Shriver & Jacobson One New York Plaza New York, NY 10004	January 4, 2005 at 10:00 a.m.	
☐ YOU ARE COMMANDED to permit inspection of	of the following premises at the date and time specified below.	
JOANE	VAIL AND TIME	
directors, or managing agents, or other persons wh	Iversary proceeding shall designate one or more officers, no consent to testify on its behalt, and may set forth, for each on will lestify, Fed.R.Civ.P. 30(b)(6) made applicable in r.P.	
ISSUING OFFICER SIGNATURE AND TITLE Attorney for Defendants	10/13/06	
ISSUING OFFICER'S NAME, ADDITO'S AND PHONE NUMBER Bonnie Steingart, Esq. (Fried, Frank, Harris, Shriver & Jacobson LLP One New York Plaza) New York, NY 10004		
(212) 859-8000		

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ADDRESS OF SERVER

Rule 45, Fudoral Rules of Civil Procedure, Ports C & Co.

(c) PROTECTION OF PLIKSONS SUBJECT TO SURPOPIVES.

(1) A party or an attending foothers and service of a subpose shall take consumine steps to avoid anyoning undue burden or exponse on a person subject to this dutypoine. This cituit on total of which the subpose was issued shall enforce this duty and improve a party or attending to the duty อา appropriate sunction, which may ardudu, but is not luminst to lost comings and s reasonable attornay's foo,

(2XA) A person commissibility to produce and persuit inspection and copying of designated books, papore, deramants or tangible things, or respection of promises need appear in person at the place of production or inspection of promises commanded to appear for deposition, howing or tast

(R) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days effer service of the subjection or before the time specified for compliance it such time is loss than 14 days after covice, sorve upon the party or efformly deviagment on the subposes waten objection to reade, the party univing the subposes chall on to entitle inspection is made, the party neving the subposes chall on to entitle inspect and copy the materials or Inspect the premises except pursuant to an order of the court by which the subpeaus was issued. If editorion has been manted this party scoring the subponent may, upon notice to the person commanded to produce, move of any find for our what to campel the production. Such an order to compet production shall profixed any person who is not a party or an officer of a party from significant overson who is not a party or an officer of a party from significant overson who is not a party or an officer of a party from significant overson who is not a party or an officer of a party from significant overson overson.

3(A) On timely minim, the court by which a authorian was resued shall quash or modify the subpoone if it

It is different manufactured and the aftern the confidence of the commission of a commission of

(i) fiels to allow consonable with for raimplination.

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Schedule A

On January 21, 2005 at 1:00 p.m. E.S.T. at the office of Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, New York the attorneys for Magten Asset Management Corporation and Talton R. Embry will take the deposition of a representative or representatives of Avenue Capital Management, pursuant to Fed. R. Civ. P. 30(b)(6) made applicable by Fed. R. Bankr. P. 7030, upon oral examination before a Notary Public, or some other official authorized by law to take depositions. The deposition shall be recorded by stenographic means and/or by videotape. The oral examination will continue from day to day until completed.

This deposition is being taken for pre-trial discovery, for use at trial, and for such other purposes as permitted by law. You are invited to attend and take such part as fit and proper. The deponent is hereby advised of its duty to designate and produce one or more persons to testify on its behalf as to the matters of examination listed below for the time period October 1, 2003 to the present:

- The chapter 11 case of NorthWestern Corporation, including, but not limited to 1. those issues related to or involving the Committee or either Defendant.
- 2. Any confidential or non-public documents concerning NorthWestern Corporation provided to either Desendant.
- Any communications concerning confidential or non-public documents, information, or communications provided to or discussed with either Defendant concerning NorthWestern Corporation.
- 4. Any and all documents, communications or documents relating to communications concerning, involving, or relating to Defendants, Defendants' purchases and sales of QUIPS, or Defendants' involvement with the Committee.
- 5. Any actual or potential damages or injury suffered by you or any creditor of NorthWestern Corporation as a result of the acts or omissions alleged in the Complaint.

- б. The meetings or teleconferences of the Committee, including, but not limited to meetings or teleconferences between the Committee and third parties or between the Committee and NorthWestern Corporation, and any materials distributed at or in preparation for such meetings or teleconferences, and any documents related to or communications concerning such meetings or teleconferences.
- 7. Your compliance with the Trading Order and the compliance or lack thereof of any person subject to the Trading Order.
- 8. Your compliance with the Confidentiality Agreement and the compliance or lack thereof of any person subject to the Confidentiality Agreement.
- 9. Your knowledge of communications in this case between you and any other Person, including but not limited to NorthWestern Corporation or the Committee, concerning involving or relating to either Defendant.
- Your purchases and sales of securities of or claims against NorthWestern Corporation.
- 11. The efforts undertaken to respond to the request for documents set out in Schedule B to this Subpoena and the contents of those responsive documents.

Schedule B

- 1. All documents relating to or referring to communications between you and either Defendant.
- All non-public, confidential documents concerning NorthWestern Corporation provided to either Defendant by you.
- All documents relating to or referring to communications between you and any other party relating to either Defendant.
- 4, All documents and communications relating to the purchase or sale of the QUIPS by either Desendant.
- 5. All documents relating to and communications referring to the purchase or sale of securities of NorthWestern Corporation by you,

Filed 02/16/2007

- б. All documents relating to and communications referring to the compliance or lack thereof with the Trading Order by you or any other party.
- All documents relating to or communications concerning the purchase or sale of any securities of NorthWestern Corporation (including, without limitation, QUIPS) by Defendants or any other creditor that NorthWestern Corporation contends resulted in injury to any creditor of NorthWestern Corporation between October 1, 2003 and the present.
- 8. All documents relating to or communications concerning any damages or injury suffered by you or any creditor of NorthWestern Corporation, which damages and injuries NorthWestern Corporation purports to allege in the Adversary Proceeding.
- 9. All documents relating to or communications concerning the identity of any creditor of NorthWestern Corporation that has suffered damages or injuries, which damages and injuries NorthWestern Corporation purports to allege in the Adversary Proceeding.
- 10. All documents relating to and communications regarding the Confidentiality Agreement
 - 11. All documents relating to and communications regarding the Trading Order.
- All documents relating to and communications regarding the Magten Proposed 12. Trading Order.

DEFINITIONS

The terms used herein shall have the meanings ascribed to them in the definitions set forth below:

- 1. "Adversary Proceeding" shall mean NorthWestern Corporation v. Magten Asset Management Corporation and Talton R. Embry, Case No. 04-55051 (JLP), United States Bankruptcy Court for the District of Delaware.
- "Affiliates" means any person or entity controlled or managed by, controlling or under common control with any other person or entity.
 - 3. "All" means "any and all," and "any" means "any and all."

Dec 21 04 05:14p p.5

 "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

- 5. "Committee" shall mean the Official Committee of Unsecured Creditors of NorthWestern Corporation, and each individual member of the Committee, which members were initially appointed by the United States Trustee on October 1, 2003, and as such membership has changed from time to time and shall include agents, representatives, advisors and attorneys of the Committee.
- 6. "Concerning" includes referring to, relating to, embodying, in connection with, commenting on, responding to, showing, demonstrating, declaring, describing, analyzing, reflecting, containing or constituting.
- "Confidentiality Agreement" shall mean that certain agreement executed by the members of the Committee dated as of December 18, 2003.
 - 8. "Defendants" shall mean Embry and Magten.
- 9. "Document" is used in the broadest sense and includes, but is not limited to, all originals, non-identical copies and copies with marginal notations or interlineations of any writing, recording, correspondence, communication, photograph, computer data (including e-mail), or any other item containing information of any kind or nature, however produced or reproduced, whatever its origin or location, and regardless of the form in which such information exists or is maintained.
- 10. "Documents relating to" means documents containing, constituting, showing or relating or referring in any way, directly or indirectly, and is meant to include, among other documents, documents underlying, supporting, now or previously attached or appended to, or used in the preparation of any document called for by each request.
- 11. "Embry" shall mean Talton R. Embry in his capacity as Chairman of Magten, including but not limited to Embry's present and former employees, agents, representatives and attorneys.
 - 12. "Including" means including, but not limited to.

INSTRUCTIONS

- "And" as well as "or" shall be construed either disjunctively or conjunctively as 1. necessary to bring within the scope of this request all responses that might otherwise be construed to be outside of its scope.
- References to the singular shall include the plural, and references to the plural 2. shall include the singular.
- 3. The documents covered by this request include all documents in the possession, custody or control of you, or any documents that were generated or received by you or otherwise came into existence or were utilized by you from October 1, 2003 through the date of production.
- 4. A request for a document shall be deemed to include a request for any transmittal sheets, cover letters, exhibits, enclosures, or attachments to the document, and any file folder in which the document was maintained, in addition to the document itself.
- A request for a document shall be deemed to include a request for all drafts and successive iterations thereof and all modifications thereto, in addition to the document itself.
- 6. With respect to each document withheld from production on the ground of privilege or any similar claim, identify its author(s), recipient(s), addressee(s), date, subject matter, number of pages, attachments or appendices, present custodian, and identify the nature of, and grounds for, each claim of privilege.
- 7. If any of the documents requested herein were, but no longer are, in the possession, custody, or control of you, state what disposition was made of such documents, why, and include the date and place of disposition and the person(s) who disposed of the document(s).
- 8. The documents shall be produced in the order and form in which they have been maintained and the response hereto shall identify the individual from whose file(s), and indicate in response to which request, the document has been produced.

I declare under penalty and penjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.		
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ADDRESS OF SERVER

Role 45, Fortney Rules of Civil Procedure, Ports C & Dt.

- (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.
- (1) A party or an attorney responsible for the issuance and perviou of a subpoons shall take researable steps to evoid imposing undus burden or exponse on a person subject to that subpoons. The court on behalf of which the subpoons was issued shall enlarce this duty and impose upon the party or attempt in breach of this duty an appropriate sanction, which may include, but is not limited to lost dentings and a responsible enterprise has.

 (2)(A) A person commanded to produce end permit inspection and copying of designated books, papers, documents or langicle things, or inspection of premises need not appear in person at the place of production or inspection unifort commanded to product or deposition, hearing or field.
- (B) Subject to paragraph (d)(Z) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subposes of before the time specified for compliance if such time is less than 14 days after contice, some upon the pully of offering designated in the subposes within objection to inspect on copying of any of all of the designated materials of of the promises. If objection is made, the pully serving the subposes shall not be solided to inspect and copy he revierable or inspect the premises except pursuant to an order of the court by which the subposes was travel. If objection has been made the purpose party serving the subposes may, upon notice to the person commended to produce, move at any time for an order to compel the production. Such an order to compel production shall not a party or an officer of a perty from agenticant appears or exactly the production. Such an order to compel production is not a party or an officer of a perty from agenticant appears or exactly the efficiency.
 - 3(A) On Smally motion, the court by which a subposes was issued shall quash or modify the subposes if it
 - (i) falls to allow reaconable time for compliance;
 - fi) requires a person who is not a party or an efficiencial a party to travel to a place more that 100 miles from the piace where that person resides, is employed or regularly transactive pushases in person, except that, subject to the provisions of clause (c)(3)(8)(9)) of this rule such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
 - (iii) maquines disclorante of privileged or other protected matter and no exception or waiver applies, or
 - (iv) subjects a paraon to undue burden,
 - iB) if a subpoons
 - (i) requires disclosure of a trade encret or other confidential research, development, or commercial information, or
 - requires disclosure of an unratained experts opinion or in-formation not describing specific events or occurrences in dispute and resulting from the experts study made not at the request of any party, or
 - pany medicino at the neglect of any party, or (i) requires a portion who is not, a purty or an officer of a party to incur substantial expense to travel more than 100 miles to at lend stall, the court may, to protect a person subject to or attended by the subposina, quest or modify the subposina, or, if the party in whose behalf the subposina is leaved shown a substantial need for the testimony or makerist that cannot be otherwise and without undue hardship and assume that the person to whom the subposina is addressed will be responsibly companies and, the court may order appearances or production only soon special contributes.
- (d) DUTIES IN RESPONDING TO SUSPOSHA.
- (1) A parton responding to a subposed to produce documents shall produce them as they are kept in the cause of business or shall organize and label from to correspond with the categories in the demand.
- (2) When information subject to a subpoens it withhold on a claim that it is privileged or authors to protection as that preparation malariets, the claim shall be expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to

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United States Bankruptcy Court SOUTHERN DISTRICT OF NEW YORK

In re Northwestern Corporation, Reorganized Debtor	Case No. 03-126' Chapter 11	. Bankruptcy Court
Northwestern Corporation, Plaintiff V, Megten Asset Management Corporation and Talton R. Embry, Defendants	Adv. Proc. No. 04 Pending in the U.S for the District of D	. Bankruptcy Court
To: Avenue Capital Management by person de 535 Madison Avenue New York, NY 10022 YOU ARE COMMANDED to appear in the Units specified below to testify in the above adversary pro-	ed States Bankruptcy Co	
PLACE		COURTROOM
		DATE AND TIME
☐ YOU ARE COMMANDED to appear at the plate deposition in the above adversary proceeding. PLACE Fried, Frank, Hams, Shriver & Jacobson One New York Plaza New York, NY 10004		DATE AND TIME January 21, 2005 at 1:00 p.m.
YOU ARE COMMANDED to produce and pen objects at the place, date, and time specified below	mit inspection and copyi w (fist documents or obje	ng of the following documents or cts): See attached Schedule B
PLACE Fried, Frank, Harris, Shriver & Jacobsor One New York Plaza New York, NY 10004	ШP	БАТЕ AND TIME January 4, 2005 at 10:00 a.m.
YOU ARE COMMANDED to permit inspection	of the following premise	s at the date and time specified below.
PLACE	-	DATE AND TIME
Any subpoenaed organization not a party to this a directors, or managing agents, or other persons we person designated, the matters on which the person deversary proceedings by Rule 7030, Fed.R.Bant	vho consent to testify on son will testify, Fed.R.Clv	its behalf, and may set torus, for each
	A STATE OF THE PERSON NAMED IN COLUMN TWO IS NOT THE OWNER.	DATE
Attorney for Defondants American	my	10/13/06

Exhibit C

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406-259-7788

EPS ATTORNEY SERVICE

p.2 PAGE 82

B255 (17/97) Subporces in an Adversary Procooding

United States Bankruptcy Court DISTRICT OF MONTANA

SUBPOENA IN AN ADVERSARY PROCEEDING Case No. 03-12872 (JLP) Chapter 11 Pending in the U.S. Bankruptcy Court for the District of Delaware
Adv. Proc. No. 04-5505: Pending in the U.S. Bankruptcy Court for the Olstrict of Delaware
States Bankruptcy Court at the place, date, and time seeding.
COURTROOM
DATE AND TIME
date, and time specified below to testify at the taking of a OATE AND TIME January 11, 2005 at 10:00 a m
inspection and copying of the following documents of st documents or objects): See attached Schedule 8 DATE AND TIME January 4, 2005 at 10:00 a.m.
ne following premises at the date and time specified below. DATE AND TIME
sery proceeding shall designate one or more officers, onsent to testify on its behalf, and may set forth, for each fill testify, Fed R Civ.P. 30(b)(6) made applicable in
DATE 12/15/04

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Michael Schmechel 17184722909

406-259-7788 EPS ATTORNEY SERVICE

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B255 (11/97) Subpotena in an Adversary Proceeding

PROOF OF SERVICE		
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		Manner of Service
BERVED BY IPRINT NAME)		TITLE
DECLARATION OF SERVER		
I declare under penalty and perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.		
Executed on	OATE	SIGNATURE OF SERVER

ADDRESS OF SERVER

Parts 45, Fedoral Fairs of Civil Procedure, Parts C & D:

- (1) PROTECTION OF PERSONS SUBJECT TO SUPPOEHAS.
- (1) A party or an attorney responsible for the insulance and confer of a subporter shall take reasonable steps to avoid imposing unduo burdon or orders on a periori pudject to final subporter. The court on bahast of which the subporter was is used that enforce this duty and kapeso upon the party or attempt in treach of its duty an appropriate amendment which may include, but is not instead to lost constitute and a responsible amorters (to).
- an appropriety annation, which may include, but if not finded to lost carrings and a textonicital anterwrist too.

 (2(A) A person commanded to produce and permit inhaldcoment depring of ineligibles books, purpose, advantance or tangible things, or inspection of promiters need to person of the places of production or inspection and expring of this composition to the places of production or inspection commanded to produce and pormit inspection and copying they, within 14 tings after service, control pormit inspection and copying they, within 14 tings after service or an appropriate and the designation of the produce and pormit inspection and copying they, within 14 tings after service or expression or express of any or all of the designation measures are remited, service upon the party consistency supplied and not seemed to be produced and only the measurest or early or an appropriate to be order of the count by which the subspects was brute. If objection has been smalle the party copy the measurest or the person commanded to produce mixery or which the subspects was brute. If objection has been smalle the party arening the supplementally, such motion of the person commanded to produce mixery or which the subspects was brute. If objection has been smalled the person commanded and produce mixery or an appropriate and copying commanded.

 3(A) On finitely motion, the core by which a subpossal was leaved street great or excellent to the person commended.

 (b) Talks to allow responsible time for commended
 - - (i) falls to allow reasonable firms for complication;
 - (i) requires a person who is not a party or an officer of a party to travel to a place more that 100 miles from the piece where that person revision, is explayed to regularly learnests business in person, except less, subject to the provisions of clause (o)(2)(3)(iii) of this rule such such as person may in order to allow that be commanded to show from any such place within the date in which the big is that, or

 (ii) requires a factorise of printeged or other protected motion and an exception or waives applies of the contract of the protected motion and an exception or waives applies or

 - \$10 subjects a person to undue burden,
 - Anacques I (B)
 - applies disclaims of a made secret or other confidential respects, development, or conversed a information, or
 - (ii) mighter decirate of an unrataked experts option of in-totaction and describing specific swents or occurrences in dispute and contain from the experts budy had a not at the request of any party, or
 - EMY integers of any party, or

 [M] requires a person who is not a purity or on office; all a purity to incur substantive expones to introd more than room mixes to all tend ided, the count may, to
 posted a person subject to or affected by the subposted, braight or roodly lite subposted, or, if the purity in whose both of the subposted is lessed places or subject is produced in the basishney or material that convol be attentioned without souther bandwise. The portion is whom the subposted is addressed will be
 reported configuration.
- (f) DUTIES IN RESPONDING TO SUBPOENA
- (f) A percha responding to a subposes to produce documents shall produce them as they are kept in the usual course of business or shall organ to end inder show to contracted with the companies in the dominant.

 (7) When incompanies staged to a subposes is widtheid on a claim that the privileged or subject to protection as that programmer entries is, the claim shall be incompanied which is supported by a description of the recurse of the documents, companies not produced that is sufficient to enable the expanding party to

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Michael Schmechel 17184722929

406-259-7788 EPS ATTORNEY SERVICE

p.4 PAGE

Schedule A

On January 11, 2005 at 10:00 a.m. Mountain Standard Time at the office of A&W Office Service, The Grand Building, 100 North 27th Street, Suite 335, Billings, Montana, the attorneys for Mugten Asset Management Corporation and Talton R. Embry will take the deposition of a representative or representatives of Comanche Park, LLC, pursuant to Fed. R. Civ. P. 30(b)(f) made applicable by Fed. R. Bankr. P. 7030, upon oral examination before a Notary Public, or some other official authorized by law to take depositions. The deposition shall be recorded by sterographic means and/or by videotape. The oral examination will continue from day to day until completed.

This deposition is being taken for pre-trial discovery, for use at trial, and for such other purposes as permitted by law. You are invited to attend and take such part as fit and proper. The deponent is hereby advised of its duty to designate and produce one or more persons to testify on its behalf as to the matters of examination listed below for the time period October 1, 2003 to the present:

- 1. The chapter 11 case of NorthWestern Corporation, including, but not limited to those issues related to or involving the Committee or either Defendant.
- 2. Any confidential or non-public documents or communications concerning NorthWestern Corporation provided to either Defendant.
- Any communications concerning confidential or non-public documents, information, or communications provided to or discussed with either Defendant concerning NorthWestern Corporation.
- 4. Any and all documents, communications or documents relating to communications concerning, involving, or relating to Defendants, Defendants' purchases and sales of QUIPS, or Defendants' involvement with the Committee.
- Any actual or potential damages or injury suffered by you or any creditor of 5. NorthWestern Corporation as a result of the acts or omissions alleged in the Complaint.

Michael Schmechel 17184722909 406-259-7788 EPS ATTORNEY SERVICE PAGE 05

- 6. The meetings or teleconferences of the Committee, including, but not limited to meetings or teleconferences between the Committee and third parties or between the Committee and NorthWestern Corporation, and any materials distributed at or in preparation for such meetings or teleconferences, and any documents related to or communications concerning such meetings or teleconferences.
- Your compliance with the Trading Order and the compliance or lack thereof of any person subject to the Trading Order.
- 8. Your compliance with the Confidentiality Agreement and the compliance or lack thereof of any person subject to the Confidentiality Agreement.
- 9. Your knowledge of communications in this case between you and any other Person, including but not limited to NorthWestorn Corporation or the Committee, concerning: involving or relating to either Defendant.
- 10. Your purchases and sales of securities of or claims against NorthWestern Corporation.
- The efforts undertaken to respond to the request for documents set out in Schedule B to this Subpoena and the contents of those responsive documents.

Schedule B

- I. All documents relating to or referring to communications between you and either Defendant
- 2. All non-public, confidential documents concerning NorthWestern Corporation provided to either Defendant by you.
- 3. All documents relating to or referring to communications between you and any other party relating to either Defendant.
- All documents and communications relating to the purchase or sale of the QUIPS by either Defendant.
- All documents relating to and communications referring to the purchase or sale of securities of NorthWestern Corporation by you.

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Michael Schmechel

406-259-7788 EPS ATTORNEY SERVICE PAGE 95

- 6. All documents relating to and communications referring to the compliance or lack thereof with the Trading Order by you or any other party.
- 7. All documents relating to or communications concerning the purchase or sale of any securities of NorthWestern Corporation (including, without limitation, QUIPS) by Defendants or any other creditor that NorthWestern Corporation contends resulted in injury to any creditor of NorthWestern Corporation between October 1, 2003 and the present.
- 8. All documents relating to or communications concerning any damages or injury suffered by you or any creditor of NorthWestern Corporation, which damages and injuries NorthWestern Corporation purports to allege in the Adversary Proceeding.
- 9. All documents relating to or communications concerning the identity of any creditor of NorthWestern Corporation that has suffered damages or injuries, which damages and injuries NorthWestern Corporation purports to allege in the Adversary Proceeding.
- All documents relating to and communications regarding the Confidentiality
 Agreement.
 - 11. All documents relating to and communications regarding the Trading Order.
- All documents relating to and communications regarding the Magten Proposed Trading Order.

DEFINITIONS

The terms used herein shall have the meanings ascribed to them in the definitions set forth below:

- "Adversary Proceeding" shall mean NorthWestern Corporation v. Magten Asset Management Corporation and Talton R. Embry, Case No. 04-55051 (JLP), United States Bankruptcy Court for the District of Delaware.
- 2. "Affiliates" means any person or entity controlled or managed by, controlling or under common control with any other person or entity.
 - "All" means "any and all," and "any" means "any and all."

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EPS ATTORNEY SERVICE

PAGE 07

- 4. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
- 5. "Committee" shall mean the Official Committee of Unsecured Creditors of NorthWestern Corporation, and each individual member of the Committee, which members were initially appointed by the United States Trustee on October 1, 2003, and as such membership has changed from time to time and shall include agents, representatives, advisors and attorneys of the Committee.
- 6. "Concerning" includes referring to, relating to, embodying, in connection wita, commenting on, responding to, showing, demonstrating, declaring, describing, analyzing, reflecting, containing or constituting.
- 7. "Confidentiality Agreement" shall mean that certain agreement executed by the members of the Committee dated as of December 18, 2003.
 - 8. "Defendants" shall mean Embry and Magten.
- 9. "Document" is used in the broadest sense and includes, but is not limited to all originals, non-identical copies and copies with marginal notations or interlineations of any writing, recording, correspondence, communication, photograph, computer data (including temail), or any other item containing information of any kind or nature, however produced or reproduced, whatever its origin or location, and regardless of the form in which such information exists or is maintained.
- 10. "Documents relating to" means documents containing, constituting, showing or relating or referring in any way, directly or indirectly, and is meant to include, among other documents, documents underlying, supporting, new or previously attached or appended to, or used in the preparation of any document called for by each request.
- 11. "Embry" shall mean Talton R. Embry in his capacity as Chairman of Magrez, including but not limited to Embry's present and former employees, agents, representatives and attornoys.
 - 12. "Including" means including, but not limited to.

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Michael Schmechel

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- "Magten" shall mean Magten Asset Management Corporation and any person or 13. entity acting or purporting to act on behalf of, at the direction of, or in concert with it, including but not limited to present and former officers, directors, employees, agents, representatives and altomeys.
- "Magten Proposed Trading Motion" shall mean that certain draft proposed metion 14. to clarify the Trading Order, together with any other draft documents in support thereof, including but not limited to a draft form of order, circulated on or about February 5, 2004.
- "NorthWestern Corporation" shall mean NorthWestern Corporation, its Affiliates and any parent, subsidiary, predecessor and successor, and any person or entity acting or purporting to act on behalf of, at the direction of, or in concert with it, including but not limited to NorthWestern Corporation's present and former officers, directors, employees, servants, agents, representatives, financial advisors and attorneys.
- "Person" includes any natural person, group, investigatory body, governmenta! unit, governmental agency or department, corporation, association, partnership, limited partnership, joint venture, sole proprietorship, business, business entity, organization, or institution.
- "QUIPS" shall mean the Series A 8 45% Quarterly Income Preferred Securities 17. issued by Montana Capital I, a business trust established pursuant to the Delaware Business Trust Act.
- "Trading Order" shall mean that certain order dated November 6, 2003 by the 18. United States Bankruptey Court for the District of Delaware Permitting Securities Trading Upon an Establishment of an Ethical Wall, and all documents filed in support thereof.
- "You" or 'your' shall mean Commiche Park LLC, its Affiliates, and any person or entity acting or purporting to act on behalf of, at the direction of, or in concert with it, including but not limited to present and former officers, directors, employees, servants, agents, representatives and attorneys.

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INSTRUCTIONS

- 1. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this request all responses that might otherwise be construed to be outside of its scope.
- 2. References to the singular shall include the plural, and references to the plural shall include the singular.
- 3. The documents covered by this request include all documents in the possession, custody or control of you, or any documents that were generated or received by you or otherwise came into existence or were utilized by you from October 1, 2003 through the date of production.
- 4. A request for a document shall be deemed to include a request for any transmittal sheets, cover letters, exhibits, enclosures, or attachments to the document, and any file folder in which the document was maintained, in addition to the document itself.
- 5. A request for a document shall be deemed to include a request for all drafts and successive iterations thereof and all modifications thereto, in addition to the document itself.
- 6. With respect to each document withheld from production on the ground of privilege or any similar claim, identify its author(s), recipient(s), addressee(s), date, subject matter, number of pages, attachments or appendices, present custodian, and identify the nature of, and grounds for, each claim of privilege.
- 7. If any of the documents requested horein were, but no longer are, in the possession, custody, or control of you, state what disposition was made of such documents, v/hy, and include the date and place of disposition and the person(s) who disposed of the document(s).
- 8. The documents shall be produced in the order and form in which they have been maintained and the response hereto shall identify the individual from whose file(6), and indicate in response to which request, the document has been produced.

Exhibit D

B255 (11/97) Subpoena in an Adversary Proceeding

United States Bankruptcy Court SOUTHERN DISTRICT OF NEW YORK

In re Northwestern Corporation, Reorganized Debtor	SUBPOENA IN AN ADVERSARY PROCEEDING Case No. 03-12872 (JLP) Chapter 11 Pending in the U.S. Bankruptcy Court
Northwestern Corporation, Plaintiff	for the District of Delaware
v. Magten Asset Management Corporation and Talton R. Embry, Defendants	Adv. Proc. No. 04-55051 Pending in the U.S. Bankruptcy Court for the District of Delaware
To: Franklin Templeton Mutual Series Fund by p c/o Franklin Mutual Advisers, LLC 51 JFK Parkway Short Hills, NJ 07078 YOU ARE COMMANDED to appear in the United specified below to testify in the above adversary products	d States Bankruptov Court at the place, date, and time
PLACE	COURTROOM
	DATE AND TIME
opposition in the above adversary proceeding.	, date, and time specified below to testify at the taking of a
PLACE Fried, Frank, Harris, Shriver & Jacobson Ll One New York Plaza New York, NY 10004	DATE AND TIME January 19, 2005 at 1:00 p.m.
XOU ARE COMMANDED to produce and permit objects at the place, date, and time specified below (I	inspection and copying of the following documents or ist documents or objects): See attached Schedule B
PLACE Fried, Frank, Harris, Shriver & Jacobson LL One New York Plaza	P DATE AND TIME
New York, NY 10004	January 4, 2005 at 10:00 a.m.
☐ YOU ARE COMMANDED to permit inspection of t	he following premises at the date and time specified below.
PLACE	DATE AND TIME
Any subpoenaed organization not a party to this adver directors, or managing agents, or other persons who operson designated, the matters on which the person wadversary proceedings by Rule 7030, Fed.R.Bankr.P.	rsary proceeding shall designate one or more officers, consent to testify on its behalf, and may set forth, for each will testify, Fed.R.Civ.P. 30(b)(6) made applicable in
ISSUING OFFICER SIGNATURE AND TITLE Attorney for Defendants Source	DATE 12/13/04
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Bonnie Steingart, Esq. Fried, Frank, Harris, Shriver & Jacobson LLP One New York Plaza New York, NY 10004 (212) 859-8000	-1.701

B255 (11/97) Subpoena in an Adversary Proceeding

DROOF OF STREET		
PROOF OF SERVICE		
	DATE	PLACE
SERVED		
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE
DECLARATION OF SERVER		
I dealers and the state of the		
I declare under penalty and perjury under the laws of the United States of America that the		
foregoing information contained in the Proof of Service is true and correct.		
Executed on		
Executed Off	DATE	CIONATI IDE DE GEOLES
		SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D;

- (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.
- (1) A party or an attempt responsible for the issuance and service of a subpoene shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoene. The court on behalf of which the subpoene was issued shall enforce this duty and impose upon the party or attempt in breach of this duty an appropriate sanction, which may include, but is not limited to lost earnings and a reasonable attempt's fee.
- (2)(A) A person commanded to produce and pormit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
- (B) Subject to paragraph (d)(2) of this rule, a person commended to produce and permit inspection and copying may, within 14 days after service of the cubpoene or before the time specified for compiliance it such time is lose than 14 days after service of the cubpoene or inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoene shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoene was issued. If objection has been made the party serving the subpoene made to subpoene made the party serving the subpoene made the party serving the subpoene mad
 - 3(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it
 - (i) falls to allow reasonable time for compliance;
 - (ii) requires a person who is not a party or an officer of a party to travel to a place more that 100 miles from the place whore that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
 - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
 - (iv) subjects a person to undue burden.
 - (8) If a subpoena
 - (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
 - (ii) requires disclosure of an unretained expert's opinion or in-formation not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to at tend trial, the court may, to protect a person subject to or effected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearances or production only upon specified conditions. (d) DUTIES IN RESPONDING TO SUBPOENA.
- A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoona is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to

Schedule A

On January 19, 2005 at 1:00 p.m. E.S.T. at the office of Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, New York the attorneys for Magton Asset Management Corporation and Talton R. Embry will take the deposition of a representative or representatives of Franklin Templeton Mutual Series Fund, pursuant to Fed. R. Civ. P. 30(b)(6) made applicable by Fed. R. Bankr. P. 7030, upon oral examination before a Notary Public, or some other official authorized by law to take depositions. The deposition shall be recorded by stenographic means and/or by videotape. The oral examination will continue from day to day until completed.

This deposition is being taken for pre-trial discovery, for use at trial, and for such other purposes as permitted by law. You are invited to attend and take such part as fit and proper. The deponent is hereby advised of its duty to designate and produce one or more persons to testify on its behalf as to the matters of examination listed below for the time period October 1, 2003 to the present:

- The chapter 11 case of NorthWestern Corporation, including, but not limited to 1. those issues related to or involving the Committee or either Defendant.
- Any confidential or non-public documents or communications concerning 2. NorthWestern Corporation provided to either Defendant.
- 3. Any communications concerning confidential or non-public documents, information, or communications provided to or discussed with either Defendant concerning NorthWestern Corporation.
- 4. Any and all documents, communications or documents relating to communications concerning, involving, or relating to Defendants, Defendants' purchases and sales of QUIPS, or Defendants' involvement with the Committee.
- 5. Any actual or potential damages or injury suffered by you or any creditor of NorthWestern Corporation as a result of the acts or omissions alleged in the Complaint.

- 6. The meetings or teleconferences of the Committee, including, but not limited to meetings or teleconferences between the Committee and third parties or between the Committee and NorthWestern Corporation, and any materials distributed at or in preparation for such meetings or teleconferences, and any documents related to or communications concerning such meetings or teleconferences.
- 7. Your compliance with the Trading Order and the compliance or lack thereof of any person subject to the Trading Order.
- 8. Your compliance with the Confidentiality Agreement and the compliance or lack thereof of any person subject to the Confidentiality Agreement.
- 9. Your knowledge of communications in this case between you and any other Person, including but not limited to NorthWestern Corporation or the Committee, concerning involving or relating to either Defendant.
- 10. Your purchases and sales of securities of or claims against NorthWestern Corporation.
- 11 The efforts undertaken to respond to the request for documents set out in Schedule B to this Subpoena and the contents of those responsive documents.

Schedule B

- 1. All documents relating to or referring to communications between you and either Defendant.
- 2. All non-public, confidential documents concerning NorthWestern Corporation provided to either Defendant by you.
- 3. All documents relating to or referring to communications between you and any other party relating to either Defendant.
- 4. All documents and communications relating to the purchase or sale of the OUIPS by either Defendant.
- All documents relating to and communications referring to the purchase or sale of securities of NorthWestern Corporation by you.

- All documents relating to and communications referring to the compliance or lack 6. thereof with the Trading Order by you or any other party.
- All documents relating to or communications concerning the purchase or sale of 7. any securities of NorthWestern Corporation (including, without limitation, QUIPS) by Defendants or any other creditor that NorthWestern Corporation contends resulted in injury to any creditor of NorthWestern Corporation between October 1, 2003 and the present.
- 8. All documents relating to or communications concerning any damages or injury suffered by you or any creditor of NorthWestern Corporation, which damages and injuries NorthWestern Corporation purports to allege in the Adversary Proceeding.
- 9. All documents relating to or communications concerning the identity of any creditor of NorthWestern Corporation that has suffered damages or injuries, which damages and injuries NorthWestern Corporation purports to allege in the Adversary Proceeding.
- All documents relating to and communications regarding the Confidentiality 10. Agreement.
 - All documents relating to and communications regarding the Trading Order. 11.
- 12. All documents relating to and communications regarding the Magten Proposed Trading Order.

DEFINITIONS

The terms used herein shall have the meanings ascribed to them in the definitions set forth below:

- "Adversary Proceeding" shall mean NorthWestern Corporation v. Magten Asset 1. Management Corporation and Talton R. Embry, Case No. 04-55051 (JLP), United States Bankruptcy Court for the District of Delaware.
- "Affiliates" means any person or entity controlled or managed by, controlling or 2. under common control with any other person or entity.
 - 3. "All" means "any and all," and "any" means "any and all."

- 4. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
- 5. "Committee" shall mean the Official Committee of Unsecured Creditors of NorthWestern Corporation, and each individual member of the Committee, which members were initially appointed by the United States Trustee on October 1, 2003, and as such membership has changed from time to time and shall include agents, representatives, advisors and attorneys of the Committee.
- б. "Concerning" includes referring to, relating to, embodying, in connection with, commenting on, responding to, showing, demonstrating, declaring, describing, analyzing, reflecting, containing or constituting.
- 7. "Confidentiality Agreement" shall mean that certain agreement executed by the members of the Committee dated as of December 18, 2003.
 - 8. "Defendants" shall mean Embry and Magten.
- 9. "Document" is used in the broadest sense and includes, but is not limited to, all originals, non-identical copies and copies with marginal notations or interlineations of any writing, recording, correspondence, communication, photograph, computer data (including email), or any other item containing information of any kind or nature, however produced or reproduced, whatever its origin or location, and regardless of the form in which such information exists or is maintained.
- "Documents relating to" means documents containing, constituting, showing or 10. relating or referring in any way, directly or indirectly, and is meant to include, among other documents, documents underlying, supporting, now or previously attached or appended to, or used in the preparation of any document called for by each request.
- "Embry" shall mean Talton R. Embry in his capacity as Chairman of Magten, including but not limited to Embry's present and former employees, agents, representatives and attorneys.
 - 12. "Including" means including, but not limited to.

- 13. "Magten" shall mean Magten Asset Management Corporation and any person or entity acting or purporting to act on behalf of, at the direction of, or in concert with it, including but not limited to present and former officers, directors, employees, agents, representatives and attorneys.
- 14. "Magten Proposed Trading Motion" shall mean that certain draft proposed motion to clarify the Trading Order, together with any other draft documents in support thereof, including but not limited to a draft form of order, circulated on or about February 5, 2004.
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- "QUIPS" shall mean the Series A 8.45% Quarterly Income Preferred Securities 17. issued by Montana Capital I, a business trust established pursuant to the Delaware Business Trust Act.
- 18. "Trading Order" shall mean that certain order dated November 6, 2003 by the United States Bankruptcy Court for the District of Delaware Permitting Securities Trading Upon an Establishment of an Ethical Wall, and all documents filed in support thereof.
- "You" or "your" shall mean Franklin Templeton Mutual Series Fund, its 19. Affiliates, and any person or entity acting or purporting to act on behalf of, at the direction of, or in concert with it, including but not limited to present and former officers, directors, employees, servants, agents, representatives and attorneys.